

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

FRANK SOLOMON FEDD, SR., :
VS. Plaintiff, : CIVIL ACTION FILE
THOMAS AMMONS and ELAINE HUTTO, : NO. 1:08-CV-110 (WLS)
Defendants. :

SUPERCEDING RECOMMENDATION

Defendants have filed a motion to dismiss plaintiff's complaint in which it is alleged that plaintiff has failed to exhaust his available administrative remedies as required by the Prison Litigation Reform Act prior to seeking relief in this court. In his response thereto plaintiff acknowledged his failure to exhaust his available administrative remedies and consented to dismissal. On November 7, 2008, the undersigned recommended that defendants' motion be granted. However that recommendation inadvertently stated that the dismissal should be with prejudice. Plaintiff has filed a timely objection stating that the dismissal should have been without prejudice. Defendants have responded stating that they do not object to a dismissal without prejudice. Accordingly, the dismissal with prejudice of November 7, 2008, is hereby withdrawn and this recommendation of dismissal without prejudice is hereby entered. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

SO RECOMMENDED, this 24th day of November 2008.

/s/ Richard L. Hodge _____

RICHARD L. HODGE
UNITED STATES MAGISTRATE JUDGE